It is not necessary to consider this portion of the law which has been argued by the complainant. No one but the complainant complains of it. Admitting, for the purpose of argument, that James G. King, and the other individuals of the firm of which the complainant is a member, could justly complain of this particular mode prescribed for the collection of the tax against the complainant; if it should be attempted to be followed, on the ground that it is objectional as being opposed to the fundamental law; yet they make no complaint by this bill. They may never have any cause of complaint, they are not parties to this bill. The question is, has the complainant any just cause of complaint to this law, or to the manner in which the tax has been assessed against his personal property in this State by virtue of its provisions? The question is, can he resist the payments? A portion of a law may be invalid while another portion of it is valid; an invalid provision of a law will not affect another and distinct provision which is valid.

Without going into the question, therefore, whether James G. King, and other members of the firm (excepting the complainant) would have any cause of complaint if the tax should be collected from their property, we hold that the allegations in the bill are not sufficient to justify the court in interfering in favor of the complainant by injunction.

The bill must therefore be dismissed.

ABSTRACTS OF RECENT ENGLISH DECISIONS.

Arbitration.—A dispute having arisen as to the result of a horse-race, the stewards (who, by the rules of the course, were to be the arbiters of all disputes,) decided against a horse against which one of them had made a bet. It was held, the decision of the stewards was not invalid on the ground of one of them being an interested arbitrator. *Ellis* vs. *Hopper*, 28 L. J., Ex., 1.

Auction.—Although at a sale by auction, the auctioneer may, after a bidding has been accepted, become the agent of the bidder for the purpose of signing a memorandum of the agreement, he is not an agent for the bidder at all, till the bidding is accepted; and until the hammer is

knocked down, both the bidder and the vendor are free, and may retract if they choose to do so. Therefore, where the owner of a mare sent her to the defendant with instructions to sell her by auction without reserve, and the plaintiff was the highest *bonâ fide* bidder, but the mare was knocked down to the owner who made a higher bid, it was held, that the plaintiff could not maintain an action against the defendant on the ground that he was his agent, and was bound to complete the contract on his behalf. *Quære*—Whether there would be any remedy against the owner who violated the condition that the mare would be sold without reserve. *Warlow* vs. *Harrison*, 28 L. J., Q. B., 18.

Evidence.—To prove there was a public right of way over certain closes, part of a manor, defendant put in evidence a map used by a deceased steward of the manor, at the manor courts, for the purpose of defining the copyholds. In it there appeared a space marked out by two lines crossing the closes in question, and called Mellow Lane. There were occupation ways as well as public highways marked upon the map, but there was nothing to distinguish one from the other, nor was there anything to show that the space marke out as above mentioned was a public highway at all. The map was held inadmissable. *Pipe* vs. *Fulcher*, 28 L. J., Q. B., 12.

Annuity.—Testator gave an annuity, or clear yearly rent-charge, of 300*l.* to his niece A. B, for her life; and after her decease, he gave the said annuity of rent-charge unto her children equally, if more than one, share and share alike, to be applied for their maintenance until the youngest should attain twenty-one; on the happening of which event he directed the said annuity to be absolutely sold by such children, and the proceeds to be equally divided among them; and he charged the said annuity upon his real estates, which, subject to the said annuity, he devised to H. in fee. This gift held to create a rent-charge on the estates in fee simple. *Mansergh* vs. *Campbell*, 28 L. J. Ch. 61. Ld. Chancellor.

Injunction.—Bills filed by an American trading company, incorporated by the law of the State of Connecticut, in the United States of America, for an injunction to restrain defendant, a manufacturer of Birmingham, from continuing the fraudulent use, as alleged, of the trade marks of plaintiffs, and for an account of profits. Defendant, by his answer, admitted the user of the trade marks complained of, but by way of rebuttal of the charge of fraud, stated that in so using the said trade marks he had only followed a custom prevalent at Birmingham for manufactures of goods of

the kind sold by the plaintiffs, to affix on the goods ordered by merchants a particular trade mark, relying on the respectability of the merchant, when known to them, for the fact that those merchants had authority to act as agents of, or by way of license from, the person entitled to the exclusive use of trade marks; and, further, that he had been informed that plaintiffs themselves had ordered goods to be manufactured at Birmingham with their own trade mark upon them, for the purpose of sale in foreign countries. These statements of defendant were left uncontradicted by plaintiffs. The court, upon motion for decree, ordered that an interim injunction, which the defendant had previously submitted to, should be continued for a year, with liberty to the plaintiffs to bring an action within that time to try their right at law; and in case of their not proceeding at law and to trial within that time, then that their bill should thereupon stand dismissed, with costs. *The Collins Co.* vs. *Reeves*, 28 L. J. Ch. 56. Stuart, V. C.

Insurance on Lives.—A policy of assurance on the life of E. W. was subject to a condition avoiding it on suicide, but provided that in case the policy should have been assigned to other parties for a valuable consideration six calender months before the death of the assured, it should remain in force to the extent of the beneficial interest therein of the party to whom it should have been assigned. E. W. deposited the policy with the plaintiff. The policy was accompanied by a letter, stating that it was to be held "as security, in case of death or otherwise, for any notes of hand or bills of exchange you may have cashed for me." From that time a current account existed between the parties; the plaintiff cashed or discounted for E. W. divers bills of exchange, and frequently took renewals of them as they became due. E. W. afterwards shot himself. At that time a sum of money was due to the plaintiff by E. W. on several outstanding bills of exchange, &c., exceeding the amount payable on the policy; but none of them bore date much more than two months before the death of E. W. Upon a bill to obtain payment of the sums insured, it was held, the policy was duly assigned; that the security continued from the date of the deposit, notwithstanding the consideration for it was fluctuating; that the payment or withdrawal of the earlier bills did not necessitate a fresh deposit; and that it was, and was intended to be, a security for what was due on the current account at the death of E. W. or otherwise. *Jones* vs. *The Consolidated Investment and Assurance Co.*, 28 L. J. Ch. 66. Master of Rolls.

Legacy.—A sum of stock was bequeathed to trustees, after the decease of the survivor of two tenants for life, "to pay and apply the stock equally amongst the testator's nephews and nieces then living, or their legal personal representatives, share and share alike." There were seven nephews and nieces; four were still living; one nephew and niece had died in the lifetime of the testator; the nephew alone had left issue; another nephew survived the testator, and died in the lifetime of the surviving tenant for life, leaving issue. Upon a suit for the administration of the fund, it was held to be devisible into seven shares, and that the nephews and nieces living were each entitled to one share, and that the legal personal representatives of each nephew and niece deceased were entitled to one share each. *King* vs. *Cleaveland*, 28 L. J. Ch. 74. Master of Rolls.

A substitutionary gift to the personal representatives of a niece, one of a class, who had died in the lifetime of testator, without issue, devolves upon her next of kin, and does not pass to her administrator. *King* vs. *Cleaveland*. 28 L. J. Ch. 76. Master of Rolls.

Bill of Exchange.—Where a bill of exchange is addressed to the payee, with his private residence added, and is accepted by him payable at his bankers; in order to charge an indorser, presentment at the bankers is necessary, and presentment at the acceptor's place of residence is not sufficient. That there were no effects of the acceptor in the bankers' hands at the time the bill became due does not excuse the want of due presentment as against an indorser. *Saul* vs. *Jones*, 28 L. J., Q. B. 37.

Carrier.—A common carrier is not estopped from disputing the title of the person from whom he has received goods to carry. It is an answer to trover against the carrier by such person, that the goods have been delivered to the real owner on his claiming them. Effect of owner's conduct as to passing property in goods. *Sheridan* vs. *The New Quay Company*, 28 L. J., C. P., 58.

A carrier of goods or cattle is only bound to carry in a reasonable time, under ordinary circumstances, and is not bound to use extraordinary efforts or incur extra expense in order to surmount obstructions caused by the act of God; as, a fall of snow. *Briddon* vs. *The Great Northern Rail. Co.*, 28 L. J. Ex. 51.

Where carriers by sea had received a cask of brandy to carry, on the terms (*inter alia*) that they should not be liable for any loss or damage arising from any cause whatever during the transit, it was held, they were

not liable as common carriers for an injury to the cask. And, the only evidence as to the loss being that the cask arrived staved in (there being no proof as to the cause of this injury,) *quære*, whether they would have been liable even had the condition been "not to be liable for leakage unless arising from bad stowage." *Phillips* vs. *Edwards*, 28 L. J. Ex. 52.

Champerty.—After verdict and before judgment plaintiff in ejectment assigned the subject-matter of the suit to his attorney in the suit, as a security for money advanced by the attorney for carrying on the suit and other purposes, and for the amount due to him for his professional services. Assignment not void as against public policy, or by reason of any of the statutes against champerty and maintenance, being only a security and not an absolute purchase. *Anderson* vs. *Radcliffe*, 28 L. J. Q. B. 32.

Landlord and Tenant.—Where goods have been seized as a distress for rent, and before impounding a tender is made of the rent in arrear and costs, an action will lie for the subsequent detaining of the goods. *Loring* vs. *Warburton*, 28 L. J. Q. B. 31.

Libel.—The 6 & 7 Vict. c. 96, s. 2, which permits newspaper publishers in actions for libel to plead that the libellous matter was inserted without malice, and that a full apology had been inserted in the newspaper, and to pay money into court by way of amends, contemplates the insertion of an apology, not merely sufficient in its terms, but inserted in a proper mode as to type and place. *Lafone* vs. *Smith*, 28 L. J. Ex. 33.

Master and Servant.—Right of action by servant for wages under an agreement notwithstanding the servant's inability to work by reason of sickness. *Cuckson* vs. *Stones*, 28 L. J. Q. B. 25.

Ship and Shipping.—Where a charterer agreed to load a vessel when it arrived at a certain port, with a cargo of coals in the customary manner, and the question at the trial was whether he had so loaded the vessel within a reasonable time, it was held, that the jury were rightly directed not to take into consideration a delay occasioned by a strike among the colliers and a dispute with a railway company, along whose line the coal had to be brought to the port for shipment, these not being matters contemplated by either party when the charter-party was made. *Adams* vs. *The Royal Mail Steam-Packet Co.*, 28 L. J. C. P. 33.

Larceny.—If a person finds a purse of money on the high road and appropriates it to his own use, the question for the jury is, whether he did so at the time of finding with a felonious intent, and that depends on

whether at that time he knew who the owner was, or had the means of knowing him by reason of marks on the article indicating the owner. But the finder is not guilty of felony merely because, when afterwards learning who the owner is, he fails to make restitution, and fraudulently retains the property. *R.* vs. *Christopher*, 28 L. J. M. C. 35.

Broker.—Bonds, payable to bearer, and passing by delivery only, were deposited with bankers for safe custody, and the bankers afterwards fraudulently deposited them with their brokers as a security for money advanced, and became bankrupt. It was held, that the bonds were subject to the general lien of the brokers for all money advanced by them to the bankers, and not merely for the advance made upon the security of those particular bonds. *Semble*—The court will take judicial notice of the custom of brokers as part of the general custom of merchants. *Jones* vs. *Pepercorne*, 28 L. J. Ch. 158. Wood V. C.

Debentures.—A person buying debentures of a joint-stock company is bound to ascertain whether they are tainted with fraud or irregularity; and, in such a case, the facts of the assignment having been registered and of interest having been paid, make no difference unless the shareholders can be shown to have acquiesced. *Athenæum Life Ins. Co.* vs. *Pooley*, 28 L. J. Ch. 119. Stuart V. C.

Injunction.—Where a company having power by act of parliament to raise an embankment to a certain height exceeds that height, a neighboring landowner is not, on account of the possibility of injury to his lands, entitled to an injunction against the company; but the right to such injunction is in the Attorney General, on behalf of the public. *Ware* vs. *Regent's Canal Co.*, 28 L. J. Ch. 153. Chancellor.

Action.—An action will lie against a local board of health of a corporate district, under 11 & 12 Vict. c. 63, as a body for negligently carrying out works within their powers so as to cause injury to any person, *e. g.* for so negligently and improperly constructing a sewer as to cause a nuisance by its discharge. *Semble*, that an injury so caused cannot be compensated under section 144, as "damage sustained by reason of the exercise of the powers of the act." *The Company of Proprietors of the Southampton and Itchin Floating Bridge and Roads* vs. *The Local Board of Health of Southampton*, 28 L. J. Q. B. 41.

Contract.—In an action for goods sold, a letter from the defendant's broker announcing to his principals a purchase on their account, on certain

terms stated, was held to be evidence of a precedent authority to purchase, not merely on precisely the same terms stated, but upon terms not unusual or unreasonable, and in substance the same: and held, also, that the sellers' right to resort to the undisclosed principals on a contract made by the broker in his own name, was not affected by their delaying to do so until parties to whom the broker had re-sold had become insolvent; the defendants, the orginal purchasers, not having paid the brokers in the mean time, nor otherwise altered their position. *Campbell* v. *Hicks*, 28 L. J. Ex. 70.

Principal and Agent.—The agents of the assured having, in accordance with the usage, adjusted the amount of the loss with the broker of the underwriter, and received from him a credit note for the amount to be paid in a month, the broker having funds of the underwriter in his hands sufficient to meet the amount, but after it was due becoming insolvent, it was held, in an action on a policy of insurance, that the underwriter was not discharged. *Macfarlane* v. *Giaunocopulo*, 28 L. J. Ex. 72.

Insurance.—A policy of assurance was in the following form:—"Sum assured, 1,000*l.*; annual premium, 33*l.*; whole term; payable by quarterly instalments of 8*l.* 5*s.* each." It then stated that a proposal had been made to effect an insurance on the life of B, and proceeded: "Whereas the said assured has paid to the said company the sum of 8*l.* 5*s.* as the premium for the said assurance until the 2d day of November, 1856; now this policy witnesses, that if B. shall die before the termination of twelve calendar months from the date hereof, or shall live beyond such period, and the said assured, or his assigns," &c., "shall on before that period, or on or before the expiration of every succeeding twelve months, provided the said B. shall be still living, pay, or cause to be paid, at the office for the time being of the said company, the annual amount of premium," then the funds, &c., of the company shall be liable to pay the 1,000*l.* There was a proviso, "that if the said B. shall happen to die before the whole of the said quarterly payments shall have become payable under these presents for the year in which he shall so die, it shall be lawful for the said directors to deduct and retain from the said sum of 1,000*l.* so much as will be sufficient to pay and satisfy the whole of the said premiums for that year, reckoning the said year to commence from the 2nd day of August. It was held, in the Exchequer Chamber, reversing the judgment of the Court of Queen's Bench, that this was a yearly and not a quarterly policy; and that the circumstance, that B. died after the third quarterly instal-

ment of premium had become due, and before it had been paid, did not avoid the policy, or disentitle the assured to recover on it. *Sheridan* v. *the Phœnix Life Insurance Co.*, 28 L. J. Q. B. 94.

Master and Servant.—An artisan who has been engaged for a term to work in the art he practises, upon his representing himself to possess the requisite skill, may, upon his proving to be incompetent, be discharged by his employer before the end of the term for which he was so engaged. *Harmer* v. *Cornelius*, 28 L. J. C. P., 85.

Partners.—It is an incident of a common trading partnership that the managing partners have authority to borrow money for partnership purposes, which include the payment of partnership debts incurred in the ordinary course of business; and this authority is not excluded by special provisions in the partnership deed as to the raising of additional capital, or supplying deficiencies in the funds by contributions of the partners. *Brown* v. *Kidger*, 28 L. J. Ex. 66.

Stoppage in Transitu.—H. ordered hemp of the plaintiffs. It was sent him in a general ship. On the ship's arrival, being in embarrassed circumstances, and contemplating stopping business, H. ordered that the hemp should not be delivered at his premises till further orders. It was, however, delivered at his premises in his absence, and put by his servants in his warehouse, of which H. kept the key. He stopped payment the same evening. The next day he wrote to the plaintiffs, stating the circumstances connected with the hemp and his own position, and that his object was to have had the hemp warehoused for them, but that his solicitor had told him that he could not return the hemp; and ended by regretting that he was under the necessity of depriving the plaintiffs of what he considered their right. On the plaintiffs demanding the hemp, H. did not deliver it to them, but referred them to his solicitor. He subsequently delivered it to the defendants, who were trustees for his creditors under a deed of assignment by H. of his whole estate for their benefit. In trover for the hemp, it was held, the plaintiffs were not entitled to recover it, as they were too late to stop *in transitu* after the 4th of February, and there had been no rescinding of the contract by mutual agreement. *Heinekey* v. *Earle*, 28 L. J. Q. B. 79.

Embezzlement.—A foreman employed to sell goods, sold some to a customer, who bought them *bonâ fide* as bought from the master, and who paid the foreman for them. The foreman did not enter the sale in his books, or account for the price to his master, as in duty bound, but con-

cealed the whole transaction, and employed the money for his own use. It was held the foreman was not guilty of stealing the goods, as the sale was binding as between the buyer and the master, but that his offence was embezzling the price. *R.* v. *Betts.* 28 L. J. M. C. 69.

Specific Performance.—An offer by letter to sell or buy a business cannot be carried into effect unless from the whole letter taken together an inference can be drawn from which the material terms of the contract can be ascertained. In the absence of that, it amounts but to an offer to treat, as nothing can be supplied by conjecture. What may be considered as fair inferences in such cases. *Cooper* v. *Hood,* 28 L. J. Ch. 212.

Landlord and Tenant.—It is only the lessor or the person who stands in the situation of landlord, and not any one who derives title from the lessor, who can, under 4 Geo. 2. c. 28. s. 1, sue a tenant for double value where there has been a holding over after determination of the tenancy. *Blatchford* v. *Cole,* 28 L. J. C. P. 140.

Navigation.—If a local statute give to a navigation company, among other powers, a power to appoint and set out towing-paths alongside a river, but the language leaves it in equal doubt whether the soil of the towing-paths is to vest in the company or only the easement of the right of way for towing; though it is necessary for other purposes of the company, that the company should have the fee of certain parts of the land adjoining the river, the company does not acquire the fee in the towing-paths, but only such a use of the soil or easement as was necessary for the purpose of the navigation. *Badger* v. *the South Yorkshire Rail. and River Dun Navigation Co.,* 28 L. J. Q. B. 118.

Vendor and Purchaser.—A title to an estate, which is dependent on a question of fact, which it is impossible to regard as reasonably certain, cannot be deemed a good and sufficient title as between vendor and purchaser; and the latter, when such is the case, is entitled to treat the title as insufficient, and to recover back his deposit-money. *Simmons* v. *Heseltine,* 28 L. J. C. P. 129.

Rape.—To constitute rape it is not necessary that the connexion with the woman should be had against her will; it is sufficient if it be without her consent. *R.* v. *Fletcher,* 28 L. J. M. C. 85.